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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,697	03/09/2004	Benoit Abribat	U 0164-F04A	2889

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DIEHL SERVILLA LLC (COG/CGG)
33 WOOD AVE SOUTH
SECOND FLOOR, SUITE 210
ISELIN, NJ 08830

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

NOTIFICATION DATE	DELIVERY MODE
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05/31/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@dsiplaw.com
spedersen@dsiplaw.com
jescobar@dsiplaw.com

Office Action Summary	Application No. 10/796,697	Applicant(s) ABRIBAT ET AL.	
	Examiner ALTON PRYOR	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/20/10;10/21/10.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26,28-30,32,34,36,37,39 and 41-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26,28-30,32,34,36,37,39,41-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's arguments 7/20/10 and 10/21/10 have been fully considered but they are not persuasive over Auda et al. used in the 103 rejection of record. See discussion below. Previous rejections not addressed below have been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26,28-30,32,34,36,37,39,41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auda et al (US 6586366). Auda et al. teach oil based emulsifiable concentrates and agrochemical formulations comprising at least one oil component such as a fatty acid ester (column 1 line 50- column 2 line 12), at least one saccharide surfactant such as polyglycoside (hydrophilic emulsifier), and at least one other nonionic surfactant (column 1, lines 9-15, column 7 lines 10-20) such as EO sorbitan monolaurate (lipophilic emulsifier). The agrochemical in the composition can be glyphosate (column 6 lines 43-57). When the composition contains water, it will form a microemulsion (lines 43-49). The oil component may be a mineral or vegetable oil, or a fatty acid ester such as methyl or ethyl laurate (lines 50-65). The saccharide surfactant may be an alkyl polyglucoside (column 2 lines 52-53). Other components may include antifoaming agents (column 3, line 35) and agrochemical agents such as herbicides, pesticides, insecticides, fungicides, or acaricides (lines 60-63), such as the herbicide glyphosate (column 5-6). Auda et al. teach a method of treating plants with adjuvant composition for the purpose of

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controlling pests. Auda et al. do not exemplify a combination of an oil component, at least one saccharide surfactant such as polyglycoside (hydrophilic emulsifier), and at least one other nonionic surfactant such as EO sorbitan monolaurate (lipophilic emulsifier) to form a microemulsion upon the addition of water. However, one of ordinary skill in the art would be motivated to combine these components because they disclose the same adjuvant materials as having utility in making microemulsion agrochemical compositions wherein the composition can be applied to plants to control pests.

Thus it would have been prima facie obvious to the ordinary artisan at the time the invention was made to have combined applicants' oil, hydrophilic emulsifier, lipophilic co-emulsifier and customary additives into a single microemulsion composition because the prior art teaches that these components, and specific examples thereof as claimed herein, were known to be combinable in a single composition in order to produce a microemulsion composition which was useful for combining with agrochemicals. It is well within the skill of the artisan to determine the optimal amount of each ingredient. One would have been motivated to do this in order to develop an agrochemical composition that would have been most effective in plant treatment without destroying the desired plant.

Response to Applicants argument

Applicants argue that the polyethoxylated (pentaethoxylated) sorbitan monolaurate cited in Auda et al. is a hydrophilic emulsifier rather than a lipophilic emulsifier as claimed. Applicants argue that alkoxylated non-ionic surfactants are not embraced as emulsifiers in agrochemical compositions because of biodegradability,

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phytotoxicity and microemulsion stability issues. The Examiner argues that Applicants no evidence proofing that polyethoxylated sorbitan monolaurate is hydrophilic rather than lipophilic as claimed. Applicants argue that the unethoxylated sorbitan monolaurates, not polyethoxylated sorbitan monolaurates, are claimed. The Examiner argues that the instant specification does not exclude the use of polyethoxylated sorbitan monolaurates specifically, but the specification rather excludes broadly alkoxyated nonionic surfactants due to poor biogradability and phytotoxicity to plants. At page 1 line 23 – page 2 line 3 of the specification, the board recitation of alkoxyated nonionic surfactants may not exclude polyethoxylated sorbitan monolaurates. The Examiner finds it unconvincing to exclude polyethoxylated sorbitan monolaurates from the invention based on the general teaching in specification that alkoxyated nonionic surfactants have poor biogradability and phytotoxicity to plants. The specification including the claims do not excluded unethoxylated sorbitan monolaurates.

Applicants argue the Auda et al. is improper prior art according to the publication date. The Examiner argues that Auda et al. reference is used because of its filing of 05/17/96 which is before the instant Application's filing date of 03/09/04 and even prior to the related provisional application's filing date of 03/11/03.

Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auda et al. as applied to claims 26,28-30,32-34,36,37,39-41 above, and further in view of SU 450563; 4/18/75, Tang (CN 1052302; 11/28/89) or Okada (JP 04046104; 2/17/92). Auda et al. teach all that is recited in claims 42 and 43 except for the composition comprising an citric acid and inorganic salt or organic acid. However, SU '563 or Tang or Okada teaches that the combination of citric acid along with sodium sulphate

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(inorganic salt), titanium salt (inorganic salt) and organic acid, respectively, promote plant growth. An artisan in the field would have been motivated to combine the teachings of Auda et al. and SU '563, Tang or Okada. One would have been motivated to do this because the addition of citric acid and inorganic salt or organic acid to Auda et al. would have been expected to enhance plant growth.

Response to Applicants argument

Applicants argue that SU, Tang, and Okada were added for disclosing citric acid. However, said three references teach enhancement of plant growth by using citric acid, not the herbicidal effect instantly claimed. The Examiner argues that herbicides are used to enhance the growth of desired plants by destroying the growth of undesirable plants. Therefore, it is obvious to add the citric acid taught by the references to Auda et al.s' composition to enhance the growth of the desirable plants.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616